

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 15, 2001

D038179 E. L. Yeager Construction Company, Inc. v. Franklin Steel Company, Inc.

We affirm the portion of the judgment determining Paragraph 12.1 sets forth the terms of the controlling indemnity provision in the Yeager/Franklin subcontract agreement. We reverse the remaining portions of the judgment, and remand for a trial on the unresolved factual issues in the case, including whether McGuire's injuries were caused by the negligence of Franklin or its subcontractors, and the extent to which the alleged negligence "pertained to the performance of the Subcontract..." Franklin to bear costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., McDonald, J.

D036021 People v. Abney

The petition for rehearing is denied.

D036144 In re the marriage of Harris

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. E. Moore

D036122 New Hampshire Insurance Company v. Fidelity and Deposit Company of Maryland

Cause called on merits. David Jay Ozeran, Esq. argued for appellant. Robert Kracht, Esq. argued for respondent. Mr. Ozeran replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D036183) People v. Munoz

D034892) People v. Munoz

Cause called on merits. Gregory L. Rickard, Esq. argued for appellant, Munoz. Janelle Boustany, Deputy Attorney General argued for respondent. Bradley Weinreb, Deputy Attorney General was present in oral argument, but did not argue. Mr. Rickard replied. Cause submitted.

Court recessed at 9:47 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D033892 People v. Davis

Cause called on merits. Michelle Rogers, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Rogers replied. Cause submitted.

D036921 Vallejo v. Vallejo

Cause called on merits. Stephen Temko, Esq. argued for appellant. Sharron Voorhees, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

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October 15, 2001 (Continued)

D036140 California Medical Association v. Aetna U.S. Healthcare, et al.

Cause called on merits. Catherine Hansen, Esq. argued for appellant. Kevin R. Nowicki, Esq. argued for respondent, Aetna and Prudential Healthcare. Ms. Hansen replied. Cause submitted.

Court recessed at 11:10 a.m. until 1:30 p.m.

D037182 People v. Kwasny

The judgment is modified to reflect a \$1,200 restitution fine and a \$1,200 parole revocation fine. The superior court is directed to prepare an amended abstract of judgment accordingly and forward a corrected copy to the Department of Corrections. In all other respects, the judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D037391 People v. Rios

The judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D037731 People v. Brown

Judgment affirmed. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D037242 People v. Lopez

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D038894 O'Connor v. Superior Court of San Diego County/People

The petition is denied. Petitioner has an adequate remedy by way of appeal.

D038131 In re Z.S., a Juvenile

D038666 In re Z.S., a Juvenile

The unopposed request to consolidate the above-numbered appeals is granted. All future filings will be under D038131.

D037417 Berry et al. v. Scherger et al./Department of Health Services

The appeal is dismissed.

D036364 People v. Cox

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D036649 People v. Barfield

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

October 15, 2001 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and the Honorable Associate Justices
Judith Haller and Alex McDonald
Clerk: W. Pasek

D035450 In re Tobacco Cases II, JCCP 4042

Cause called on merits. Marie Seth Weiner, Esq. argued for appellants. Gregory P. Stone, Esq. argued for respondents. Mary Elizabeth McGarry, Esq. argued for respondent/cross-appellant. Ms. Wiener replied. Cause submitted.

Court recessed for change of panel.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Judith Haller.

D036592 In re the Lawrence John Stephens Trust

Cause called on merits. John Wynne, Esq. argued for appellant Grace Maxine Stephens.
Richard H. Benes, Esq. argued for appellants Lawrence James Stephens and John Hamilton Stephens.
Charles A. Bird, Esq. argued for Respondents. Mr. Wynne replied. Cause submitted.

Court recessed for change of panel.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Patricia Benke and Alex McDonald.

D035507 Lynch v. Warwick et al.

Cause called on merits. James Byrnes, Esq. argued for appellant. Dick A. Semerdjian, Esq. argued for respondent. Mr. Byrnes replied. Cause submitted.

Court recessed until Tuesday, October 16, 2001 at 9:00 a.m.

D037147 People v. Latimore

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D037927 People v. Hill

The judgment is affirmed as modified. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D037544 Doesburg et al. v. The City of San Clemente

The remittitur of September 26, 2001 contained a clerical error. It is recalled. The Orange County Clerk of the Superior Court is directed to return said remittitur to this court on or before October 26, 2001.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

October 16, 2001

D038884 In re Alan K., a Juvenile

The appeal is dismissed as the ruling is not appealable. (Welfare & Institutions Code sections 255, 256, 262, 800 (a).)

D038157 People v. Shea

The appeal is dismissed.

D038117 In re the Marriage of Darr

The appeal is dismissed.

D035520 People v. McCall

The convictions and the sentence enhancement under section 422.75 are affirmed. The admission of the prison prior allegation is reversed and the matter remanded for further proceedings to determine the truth of the allegation. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

D034521 JLRB Associates v. Jenny Craig, Inc., et al.

The judgment on JLRB's claims for fraud and the accompanying compensatory and punitive damages are reversed, with directions that the trial court enter judgment for Jenny Craig on these causes of action. The damages award on JLRB's breach of contract cause of action is reduced to \$699,671, and the court is ordered to enter a new judgment reflecting that reduction. The award of attorney fees is reversed and the matter is remanded, with directions that the court conduct a new hearing to determine the proper amount to be awarded as attorney fees. In all other respects the judgment is affirmed. Each party to bear its own costs on appeal. Nares, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D033930 People v. Norcutt et al.

The petition for rehearing filed on October 12, 2001, appellant Robin Millar is denied.

**D038886 Fogerty et al. v. The Superior Court of San Diego County/
Mission Valley South Ltd. et al.**

The petition is denied without prejudice to the petitioner to seek relief of the trial date if petitioner continues to be temporarily incapacitated 10 days before the scheduled trial date.

D036059 People v. Sawyer

D038667 In re Sawyer on Habeas Corpus

(consolidated) The trial court is directed to strike the prison term enhancements and amend the abstract of judgment accordingly. The trial court is further directed to forward a copy of the amended abstract of judgment to the Department of Corrections. The judgment, as so modified, is affirmed. The petition is denied. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D038723 County of San Diego v. Aguilar

Pursuant to California Rules of Court, rule 10(c), the appeal filed August 31, 2001, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rules 4(a) and 5(a)).

D038797 People v. Hernandez

The appeal is dismissed.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 16, 2001 (Continued)

D036035 Galin v. Gordon, Haskett & Co. et al.

Judgment affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

D036383 Caliph, Inc., et al. v. Fisher/Kondrick et al.

Affirmed. Haller, J.; We Concur: Benke, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and Alex McDonald

Clerk: D E Moore

D035969 People v. Thomas

Cause called on merits. Gary E. Nelson, Esq. argued for appellant. Tony DaSilva, Deputy Attorney
General argued for respondent. Mr. Nelson replied. Cause submitted.

D035941 People v. Lee

Cause called on merits. George Schraer, Esq. argued for appellant. Tony DaSilva, Deputy Attorney
General argued for respondent. Mr. Schraer replied. Cause submitted.

D037033 League for Coastal Protection v. City of Oceanside, et al.

Cause called on merits. Laurens H. Silver, Esq. argued for appellant. Scott Patterson, Esq. argued for
respondent, City of Oceanside and etc. Edward Silverman, Esq. was present in oral argument for real
party in interest-respondent, Manchester Resorts, but did not argue. Mr. Silver replied. Cause submitted.

D036465 Arturo Ruiz De La Pena v. Rental Image II, et al.

Cause called on merits. Frank DeSantis, Esq. argued for appellant. Henry Harmeling, Esq. argued for
respondent. Mr. DeSantis replied. Cause submitted.

Court recessed at 10:05 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and Alex McDonald

Clerk: D E Moore

D038204 Custom Air Systems, Inc. v. Transcontinental Insurance Company

Cause called on merits. Charles W. Losness, Esq. argued for appellant. Renee A. Haupt, Esq. argued for
respondent. Mr. Losness replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

October 16, 2001 (Continued)

Court recessed at 2 p.m. to change panel members. New panel: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D035438 Lauffs v. Robert Hagopian et al.

Cause called on merits. Gregg Allen Johnson, Esq. argued for appellant. William T. Bisset, Esq. argued for respondent. Mr. Johnson replied. Cause submitted.

Court recessed at 2:35 p.m. to change panel members. New panel: The Honorable Daniel Kremer, Presiding Justice and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D037155 Golden Eagle v. WCAB

Matter called on merits. Scott Stettler, Esq. argued for petitioner. Vincent Bansano, Esq. argued for WCAB. Mr. Stettler replied. Antonio Torres-Hernandez was present in courtroom. Judicial Assistant, Angela Lopez translated the oral argument for Mr. Torres. Matter submitted.

Court adjourned at 3:05 p.m.

D032538 Proulx v. Burns

The appeal is dismissed; the petition for writ of mandamus is denied. Respondent to recover his costs. Benke, J.; We Concur: Kremer, P.J., McDonald, J.

D037112 Baddour v. Baddour

The appeal is dismissed pursuant to rule 17(a).

D037431 Achtipos v. Gab Robins North America, Inc.

Upon written stipulation filed by the parties, the appeal is dismissed.

D038907 In re Diven S., a Juvenile

Request for permission to file a notice of appeal is denied.

D037321 California Teachers Association et al. v. Governing Board of El Centro School District et al.

The judgment of dismissal is affirmed. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

D036029 Scowden et al. v. Burrill et al.

Judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

October 17, 2001

D038829 Teresa S. Superior Court of the County of San Diego/San Diego County Health and Human Services Agency

The attorney for petitioner Teresa S. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D036677 Insurance Company of the West v. Goodell et al.

The judgment and order awarding costs and attorney fees to defendants are affirmed. Haller, J.; We Concur: Benke, Acting P.J., McDonald, J.

D038777 In re McCrary on Habeas Corpus

The petition is denied.

D038893 Conservatorship of the Person and Estate of Winter

The conservatee cannot file a notice of appeal. The appeal is dismissed.

D035607 Neely v. Weyerhaeuser Company

The petition for rehearing is denied. Justice Haller would grant.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 18, 2001

D035421 People v. Wofford et al.

The judgments are affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D038920 Pratt v. Superior Court of San Diego County/Syntron Bioresearch Inc.

The petition is denied.

D038699 Ronald G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Ronald G. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate will not be filed as there are no viable issues for writ review. The case is dismissed.

D036600 Calexico Hospital Management Group, LLc v. State of California et al.

The court's order sustaining respondents' demurrer to the first and second causes of action is reversed and the matter is remanded for further proceedings on these claims. The court's sustaining or respondents' demurrer to the third cause of action is affirmed. The parties are to bear their own costs on appeal. Nares, J.; We Concur: Kremer, P.J., Huffman, J.

D036592 Stephens v. Stephens/Johnson et al.

The order is affirmed. Kremer, P.J.; We Concur: Haller, J., Nares, J.

D037075 In re Leticia S., a Juvenile.

The petition for rehearing and request for depublication are denied.

D038776 In re Abney on Habeas Corpus

The petition is denied.

D038917 Breland v. Superior Court of San Diego County/People

The petition is denied.

D035434 People v. Lambert

The remittitur of October 16, 2001 issued due to clerical error. It is recalled. The San Diego County Clerk of the Superior Court is directed to return said remittitur to this court on or before October 29, 2001.

D038725 In re Aparicio on Habeas Corpus

The petition is denied.

D035555 People v. Tamayo

As modified the judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D038194 Consumer Justice Foundation v. Irvine Apartment Communities, et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 19(b)). Each party to bear own costs on appeal.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 19, 2001

D038399 In re Isabel S. a Juvenile

The appeal is dismissed. Nares, J.; We Concur: Benke, Acting P.J., Haller, J.

D035516 Lim v. Teledyne Ryan Aeronautical et al.

The judgment is affirmed as to Lim's causes of action for wrongful termination in violation of public policy, race discrimination, age discrimination, violation of Government Code section 12940, subdivision (i), retaliation, breach of implied contract, and breach of the covenant of good faith and fair dealing as against Teledyne; the judgment is reversed as to Lim's claims for assault, battery, and intentional and negligent infliction of emotional distress against Do and affirmed as to these claims against Teledyne. The parties are to bear their own costs on appeal. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D038065 In re Aguilar on Habeas Corpus

The petition is denied for the reasons set forth in the opinion filed in case D034652.